



Crl.A.No.321 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date of Reserving Order 24.04.2023	Date of Pronouncing Order 27.04.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.321 of 2017

S.Ganesan, M/A.50 years,
S/o.Sivalinga Kounder,
Meledaiyalam Village,
Gingee Taluk.

... Appellant

Vs.

State by:
The Deputy Superintendent of Police,
Gingee Sub Division,
Gingee Police Station.
(Crime No.37 of 2013)

... Respondent

Prayer: Appeal filed under Section 374 (2) Criminal Procedure Code to set aside the judgment dated 18.05.2017 made in Spl.S.C.No.189 of 2015 rendered by Special Sessions Judge, Special Court for exclusive trial of Cases registered under SC/ST (Prevention of Atrocities Act) 1989, Villupuram and acquit the Appellant.

For Appellant	: Mr.Swami Subramanian for Mr.C.Sundaresan
For Respondent	: Mr.L.Baskaran Government Advocate (Crl. Side)



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J U D G M E N T

The Appeal has been filed against the judgment dated 18.05.2017 made in Spl.S.C.No.189 of 2015 rendered by the learned Special Sessions Judge, Special Court for exclusive trial of Cases registered under SC/ST (Prevention of Atrocities) Act, Villupuram and acquit the Appellant.

2.The Convict/sole Accused is the Appellant herein. Before the trial Court, the Appellant/Convict/Accused faced charges under IPC as well as SC/ST (Prevention of Atrocities) Act and in respect of the offence under IPC, the trial Court has acquitted the Accused and convicted him for the offences under the SC/ST (Prevention of Atrocities) Act. Hence the Appeal.

3(a).In order to maintain the prosecution for the alleged offences under SC/ST (Prevention of Atrocities) Act, (in short, SC/ST (POA) Act), two ingredients to be satisfied, (i) The Defacto Complainant or the victim should be a member of SC/ST, while (ii) the Accused should be a non member of SC/ST.

3(b)As per Ex.P.3, report of the Tahsildar, regarding community of PW1,



PW1 belongs to Paraiyar Community, which is classified as SC community and the Accused belongs to Vanniyar community, which is classified as MBC. Having been satisfied with the twine ingredients, the jurisdictional designated Court, tried the case under the SC/ST (POA) Act, which is maintainable.

3(c).PW10/Panneerselvam, Deputy Superintendent of Police marked Ex.P.5 viz., the proceedings of the Superintendent of Police, Villupuram for nominating the investigating officer to investigate the offence under SC/ST (POA) Act and hence the investigation carried on by PW10 held to be valid.

4.The case of the prosecution is that the defacto complainant who has been examined as PW1 belongs to Scheduled Caste Community had taken a loan of Rs.20,000/- from the Accused on 25.09.2010 for agriculture purpose. PW1 has not paid the principal and interest, for which the accused is said to have gone to the house of PW1 on 25.10.2012 at about 5.00 pm and is said to have abused him by calling his caste name and also kicked him on his face, due to which, PW1 had lost two tooth and blood oozed out from his ears. Further, the accused is said to have threatened PW1 to settle the loan with interest by the next day and had criminally intimidated him.



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5.The defence case of the prosecution is that the defacto complainant has borrowed Rs.20,000/- from the accused for agriculture purpose and agreed to pay interest and to repay the principal amount after some time. Even after passing of two years, PW1 has neither paid the interest nor return the money and hence, when the Appellant asked for return of principal along with interest, the complainant had foisted a false case against him to wriggle out of the financial loan advanced by the Accused and to escape from the liability, which PW1 owes to the appellant.

6.As per Ex.P.4/FIR, case was registered for the alleged offences under Section 294(b), 448, 323, 325, 506(i), 457, 380 IPC r/w 3(1)(x) of SC/ST (POA) Act. After investigation, PW10/Investigating Officer filed the alteration report, as some of the offences alleged to have been committed by the accused does not surface during the investigation, accordingly, Sections were altered into 294(b), 448, 352, 506(i) IPC, r/w. 3(1)(x) of SC/ST (POA) Act, as could be seen from Ex.P.7. In the trial, learned Special Judge come to the conclusion that the alleged offence under Section 448, 352 and 506(i) IPC are not made out and accordingly, order of acquittal was passed. The Appellant was convicted



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for the offence under Section 3(1)(x) of SC/ST (POA) Act and hence, the Appeal.

7. During the trial, PW1 to PW10 were examined and exhibits Ex.P1 to Ex.P7 have been marked. PW1/Pichaikaran is the victim through him Ex.P1/complaint has been marked. PW2/Subbarayan, PW3/Ramasamy are the neighbours of PW1, who had not supported the case of the prosecution and treated as hostile. PW4/Munusamy, PW5/Elumalai are the sons of the victim PW1. PW6/Thangavel and PW7/Sivalingam are the witnesses, who had examined for the purpose of Ex.P.2/Observation Mahazar, PW8/Jayakumar is the Tahsildar, who had furnished Ex.P.3/Community Certificate of PW1. PW9/Nandagopal/Inspector of Police had registered Ex.P.4/FIR, PW10/Panneerselvam, Deputy Superintendent of Police, Investigating Officer through him Ex.P.5/order of the Superintendent of Police to investigate the above case has been marked, rough sketch dated 14.01.2013, Ex.P.6 and the Section alteration report, Ex.P.7 has been marked.

8. Heard the learned counsel appearing on either sides and perused the available records.



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9.Learned counsel for the Appellant would submit that there is a huge delay in filing the complaint and the private complaint was given by the Defacto Complainant under Ex.P.1, dated 21.12.2012. The learned Magistrate has directed the territorial jurisdictional Inspector, concerned to investigate the matter and based upon which Ex.P.4 FIR was registered by PW9/Nandagopal, Inspector of Police, subsequent proceedings also ordered by the Superintendent of Police through Ex.P.5 and after that Ex.P.7/alteration report also filed and the offences were altered and charge sheet has been filed.

10.Learned counsel for the Appellant further contend that the alleged occurrence evidence PW2/Subburayan turned hostile and the other occurrence witness PW3 is also turned hostile. PW4 & PW5 are sons of PW1. Neither in Ex.P.1/private complaint nor in Ex.P.4/FIR, there is no whisper about the presence of PW4 & PW5. Further more, even PW1 in the chief examination on her own stated that no one was present in the scene of alleged occurrence. The trial Court wrongly corroborated the evidence of PW4 & PW5 and hence, according to the learned counsel for the Appellant, as per the basic ingredients of Section 3(1) (x) of SC/ST (POA) Act, the occurrence should be happened in



any place within public view.

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11.Per contra, learned Government Advocate would contend that as per Ex.P.6/rough sketch alleged occurrence happened in the place within the public view.

12.After hearing the rival submissions and after going through the oral and documentary evidence adduced before the trial Court, I find that the defacto complainant was examined as PW1 and alleged occurrence witness PW2 and PW3 turned hostile. PW6 and PW7 attestor of the observation mahazar, while PW8 is the revenue witness and PW9 and PW10 are the police witnesses, who deposed about the investigation and filing of the final report.

13.On perusal of Ex.P.1 private complaint given by PW1 before the learned Judicial Magistrate, Gingee, the said private complaint appears to have been forwarded to the police station and Ex.P.4 was registered by PW9 and subsequently after obtaining necessary orders for investigation of the offences relating to SC/ST (POA) Act under Ex.P.5, PW5 has investigated the matter and filed report as stated supra. In the alteration report marked as Ex.P.7, he has



stated that various offences, which have been deleted is based upon the evidence. One of the allegation made in the complaint under Ex.P.1 is that the accused is also committed a theft of FM radio along with a sum of Rs.15,000/-, which is also found to be of no evidence and accordingly, the investigating officer has thought it fit to delete those charges and filed alteration report.

14.On perusal of PW4 and PW5, I find that they are sons of PW1. After perusing the averments made in Ex.P.1/complaint and evidence of PW1 in the witness box, I find that there is no whisper about the presence of PW4 and PW5 at the time of the alleged occurrence, assumes significance. PW1 has not whispered about the presence of PW4 and PW5 at the scene of crime. PW4 and PW5 have stated that they have witnessed the occurrence and the accused has uttered caste word. In the absence of any whisper, either in Ex.P.1 or in the evidence before the Court by PW1, regarding the presence of PW3 and PW4, this Court is of the considered opinion that the evidence of PW3 & PW4 suffer from embellishment, amounting to material contradiction and hence reasoning of the trial Court that they lend support to the evidence of PW1 is unsustainable in law.



15. At this juncture, it remains to be stated about the suggestive case of the defence side is that PW1 has borrowed Rs.20,000/- for interest and has neither paid interest nor principal. In fact, the very same averments is also been specifically stated none other than by PW1 in Ex.P1. He also admitted in his evidence that he has borrowed the sum of Rs.20,000/- from the accused, two years before the occurrence and he has not paid the interest for the period of two years and he has not repaid the interest and principal. In view of the answer elicited in the cross examination, coupled with his own admission in Ex.P.1, I find that the suggestive case of the defence that PW1 had strong motive to falsely implicate the accused to wriggle out from the financial loan liability with the accused, is more probable. Further more, it remains to be stated that PW1 has further stated that, as if, the accused had entered his house and taken away Rs.15,000/-, which was kept on the FM radio along with FM radio. Even the Investigating Officer also found that, it is a false case of PW1 and accordingly, deleted those offence while filing the charge sheet as could be seen from Ex.P.7 alteration report.

16. PW1 admitted in his evidence that when the alleged occurrence took place on 25.10.2022, other than PW1 no one was present. When that being the



case, the trial Court has committed an error in relying upon the evidence of PW4 & PW5, who were none other than sons of PW1. When it is a specific case of PW1 that no one has witnessed the occurrence and no one was present in the scene of occurrence, the trial Court committed a gross error in considering the evidence of PW4 and PW5, as if, they have been present at the time of the occurrence.

17.The necessary ingredients of the offence under Section 3(1)(x) of SC/ST (POA) Act that utterance of the caste word should be in a public place in a public view and in the instant case whether any person has viewed the alleged occurrence is also doubtful. Besides the version of PW1 for the reasons stated supra and the suggestive case of the defence, which is found to be more probable than the case of the prosecution, and hence, I have no hesitation to come to the conclusion that PW1 has got strong motive to falsely implicate the Appellant and PW1 evidence is held to be unreliable and untrustworthy and accordingly, I hold that the prosecution has not proved the charge under Section 3(1)(x) of SC/ST (POA) Act, beyond reasonable doubt for the reasons supra, the judgment of conviction and sentence passed by the trial Court is held to be unsustainable in law and accordingly, the same is set aside.



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18. In the result, the Appeal is allowed, the judgment of conviction and sentence passed by the learned Special Sessions Judge, Special Court for exclusive trial of Cases registered under SC/ST (Prevention of Atrocities Act) 1989, Villupuram in Spl.S.C.No.189 of 2015 dated 18.05.2017 is hereby set aside. The Appellant was enlarged on bail during the pendency of the Criminal Appeal. Since the Appellant is acquitted from the charge, the bail bond executed by the Appellant shall stand cancelled. If the Appellant has paid the fine amount, the same shall be refunded.

27.04.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Special Sessions Judge,
Special Court for exclusive trial of Cases
registered under SC/ST (Prevention of Atrocities Act),
Villupuram

2. The Public Prosecutor,
High Court,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 27.04.2023